Crl.A. 278/2001
BEFORE
THE HON’BLE MR. JUSTICE D.BISWAS

None appears for the appellant when the case is called out for hearing. Heard Mr K Munir, learned Public Prosecutor, Assam.

2. This appeal is directed against the judgment dated 30.6.2001 passed by the learned Sessions Judge, Dibrugarh in Sessions Case No. 6/2001 convicting the accused- appellant Jugal Mech under Section 304, Part-II IPC and sentencing him to imprisonment for five years and to pay a fine of Rs. 6,000/-, in default to further imprisonment for two years.

3. In this case, the prosecution examined six witnesses including the Medical Officer (P.W.1) and the Investigating Officer (P.W.6). P.W.2,3, 4 and 5 are near relatives of the accused who has been charged for killing his brother Ranjit Mech.

4. P.W.1 proved the ante mortem injuries found by him on the dead body of Ranjit Mech. According to him, the injuries were capable of being caused by blunt weapon. P.W.2 Bhadreswari Mech, mother of the accused-appellant as well as the deceased made no incriminating statement against the accused. P.W.3 Pramila Mech is the wife of the accused. She also said nothing against the accused. P.W.5 is a neighbour of the accused. His evidence also does not implicate the accused in any manner. Therefore, there appears to be absolutely no evidence against the accused that he had killed his brother Ranjit Mech.

5. The learned Sessions Judge relied upon the evidence of the Investigating Officer regarding recovery of a spade from the house of the accused and the medical evidence. The learned Sessions recorded the finding of conviction for the reason that the spade recovered from the house of the accused was capable of causing injuries found on the person of the deceased and on this ground alone convicted the accused under Section 304, Part-II IPC.

6. For reasons above, the impugned judgment is not sustainable in law. Hence, we allow the appeal and set aside the conviction and sentence imposed with direction to set the appellant at liberty forthwith, if still in custody.